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14 IN THE UNITED STATES DISTRICT COURT
15
16 EASTERN DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 ANTONIO GOMEZ-BARRERA,

21 Defendant.

22 CASE NO. 1:20-CR-00131-DAD-BAM

23 STIPULATION TO CONTINUE STATUS
24 CONFERENCE AND EXCLUDE TIME UNDER
25 SPEEDY TRIAL ACT; AND ORDER

26 DATE: December 9, 2020

27 TIME: 1:00 p.m.

28 COURT: Hon. Barbara A. McAuliffe

16 This case is set for status conference on December 9, 2020. On May 13, 2020, this Court issued
17 General Order 618, which suspends all jury trials in the Eastern District of California “until further
18 notice.” Further, pursuant to General Order 611, this Court’s declaration of judicial emergency under 18
19 U.S.C. § 3174, and the Ninth Circuit Judicial Council’s Order of April 16, 2020 continuing this Court’s
20 judicial emergency, this Court has allowed district judges to continue all criminal matters to a date after
21 May 2, 2021.¹ This and previous General Orders, as well as the declarations of judicial emergency,
22 were entered to address public health concerns related to COVID-19.

23 Although the General Orders and declarations of emergency address the district-wide health
24 concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision
25 “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record

27
28 ¹ A judge “may order case-by-case exceptions” at the discretion of that judge “or upon the
request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order
will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

1 findings" in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-
 2 record findings, there can be no exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such
 3 failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153
 4 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit
 5 findings on the record "either orally or in writing").

6 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 7 and inexcusable—General Orders 611, 612, 617, and 618 and the subsequent declaration of judicial
 8 emergency require specific supplementation. Ends-of-justice continuances are excludable only if "the
 9 judge granted such continuance on the basis of his findings that the ends of justice served by taking such
 10 action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C.
 11 § 3161(h)(7)(A). Moreover, no such period is excludable unless "the court sets forth, in the record of
 12 the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of
 13 such continuance outweigh the best interests of the public and the defendant in a speedy trial." *Id.*

14 The General Orders and declaration of judicial emergency exclude delay in the "ends of justice."
 15 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address
 16 continuances stemming from pandemics, natural disasters, or other emergencies, this Court has
 17 discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-
 18 week ends-of-justice continuance following Mt. St. Helens' eruption. *Furlow v. United States*, 644 F.2d
 19 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed.
 20 *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to
 21 exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency).
 22 The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated
 23 by the statutory rules.

24 In light of the societal context created by the foregoing, this Court should consider the following
 25 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
 26 justice exception, § 3161(h)(7) (Local Code T4).² If continued, this Court should designate a new date
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28 ² The parties note that General Order 612 acknowledges that a district judge may make
 "additional findings to support the exclusion" at the judge's discretion. General Order 612, ¶ 5 (E.D.
 Cal. March 18, 2020).

1 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
2 pretrial continuance must be “specifically limited in time”).

3 **STIPULATION**

4 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
5 through defendant’s counsel of record, hereby stipulate as follows:

6 1. By previous order, this matter was set for status on December 9, 2020.

7 2. By this stipulation, defendant now moves to continue the status conference until January
8 13, 2021, and to exclude time between December 9, 2020, and January 13, 2021, under 18 U.S.C.
9 § 3161(h)(7)(A), B(iv) [Local Code T4].

10 3. The parties agree and stipulate, and request that the Court find the following:

11 a) The government has represented that the discovery associated with this case has
12 been either produced directly to counsel and/or made available for inspection and copying.

13 b) Counsel for defendant desires additional time to consult with her client, to review
14 the current charges, to conduct investigation and research related to the charges, to review
15 discovery, and discuss potential resolution with her client and counsel for the government.

16 c) Counsel for defendant believes that failure to grant the above-requested
17 continuance would deny her the reasonable time necessary for effective preparation, taking into
18 account the exercise of due diligence.

19 d) The government does not object to the continuance.

20 e) Based on the above-stated findings, the ends of justice served by continuing the
21 case as requested outweigh the interest of the public and the defendant in a trial within the
22 original date prescribed by the Speedy Trial Act.

23 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
24 et seq., within which trial must commence, the time period of December 9, 2020 to January 13,
25 2021, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code
26 T4] because it results from a continuance granted by the Court at defendant’s request on the basis
27 of the Court’s finding that the ends of justice served by taking such action outweigh the best
28 interest of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: November 30, 2020

McGREGOR W. SCOTT
United States Attorney

/s/ LAURA D. WITHERS

LAURA D. WITHERS
Assistant United States Attorney

Dated: November 30, 2020

/s/ JAYA C. GUPTA

JAYA C. GUPTA
Counsel for Defendant
ANTONIO GOMEZ-
BARRERA

ORDER

IT IS SO ORDERED that the status conference is continued from December 9, 2020, to **January 13, 2021, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe**. Time is excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv).

IT IS SO ORDERED.

Dated: **November 30, 2020**

/s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE